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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/062,117

01/30/2002

Mitchell B. Oliver

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QUALCOMM INCORPORATED
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EXAMINER

NGUYEN, NGA B

ART UNIT

PAPER NUMBER

3692

NOTIFICATION DATE

DELIVERY MODE

07/14/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/062,117	Applicant(s) OLIVER ET AL.	
	Examiner Nga B. Nguyen	Art Unit 3692	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: New claims added 20-21 requires further consideration. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-3, 5, 6 and 8-19.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Nga B. Nguyen/
 Primary Examiner, Art Unit 3692

Continuation of 11. does NOT place the application in condition for allowance because:

In response to applicant's arguments against the reference individually (see page 4, first paragraph, arguments against Del Sesto, US 6,985,882 only), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references (Del Sesto, US 6,985,881 and Coyle, US 6,269,157). See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that there is no suggestion to combine the references, the examiner submits that the Supreme Court in *KSR* described the rationales to support rejections under 35 U.S.C. 103: Combining prior art elements according to known methods to yield predictable results; or Simple substitution of one known element for another to obtain predictable results. In this case, Coyle discloses buyers can be resellers to resell the service to their customers (column 15, lines 13-40, the end users or resellers purchase telecommunications service at the lower of the bid price in the auction or a negotiated price from the telecommunications service provider), therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Del Sesto's to incorporate the feature taught by Coyle above, which can obtain the predictable result that the media buyers can be media resellers to resell the advertising time or advertising space to their clients. Also, see Del Sesto, column 4, lines 50-60, buyer is an advertising agency who can buy advertising time or advertising space on behalf of clients, thus it is obvious and predictable that the advertising agency can resell advertising time or advertising space to their clients for commission.

In response to applicant's argument that Del Sesto, US 6,985,881 and Coyle, US 6,269,157 are non-analogous art, it has been held that a second prior art reference must either be in the field of the first prior art reference or, if not, then be reasonably pertinent to the particular problem with which the first prior art was concerned, in order to be relied upon as a basis for rejection of the claimed invention. In this case, Del Sesto discloses media buyers make bids to media sellers for selected advertising units, Coyle discloses resellers (as buyers) make bids to carriers for telecommunication services. Therefore, Del Sesto's and Coyle's references are in the same field (auction prior arts)..

/Nga B. Nguyen/
Primary Examiner, Art Unit 3692